

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 3/13/2012	(3) CONTACT/PHONE Kami Griffin, Assistant Director / 805-781-5708	
(4) SUBJECT Submittal of a resolution for an Interpretation using Section 22.02.030 of the Land Use Ordinance relating to "Zip Lines" and similar Rural Recreational Activities and to authorize for processing any necessary amendments to the Land Use Ordinance and Coastal Zone Land Use Ordinance.			
(5) RECOMMENDED ACTION That the Board of Supervisors: <ol style="list-style-type: none"> 1. Consider the findings and interpretation of the Planning Commission as set forth in the attached Planning Commission Resolution and render a final determination and interpretation on the matter by adopting the attached Resolution and instructing the Chairman to sign. 2. Authorize for processing any necessary amendments to the Land Use Ordinance, Coastal Zone Land Use Ordinance and Coastal Zone Framework for Planning to reflect the final determination and interpretation. 			
(6) FUNDING SOURCE(S) Department Budget	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation (Time Est. _____) <input type="checkbox"/> Hearing (Time Est. _____) <input checked="" type="checkbox"/> Board Business			
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A		(12) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(13) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(14) W-9 <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
(15) LOCATION MAP No	(16) BUSINESS IMPACT STATEMENT? No	(17) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date _____	
(18) ADMINISTRATIVE OFFICE REVIEW Reviewed by Leslie Brown			
(19) SUPERVISOR DISTRICT(S) All Districts -			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Kami Griffin, Assistant Director

VIA: Jason Giffen, Director

DATE: 3/13/2012

SUBJECT: Submittal of a resolution for an Interpretation using Section 22.02.030 of the Land Use Ordinance relating to "Zip Lines" and similar Rural Recreational Activities and to authorize for processing any necessary amendments to the Land Use Ordinance and Coastal Zone Land Use Ordinance.

RECOMMENDATION

That the Board of Supervisors:

1. Consider the findings and interpretation of the Planning Commission as set forth in the attached Planning Commission Resolution and render a final determination and interpretation on the matter by adopting the attached Resolution and instructing the Chairman to sign.
2. Authorize for processing any necessary amendments to the Land Use Ordinance, Coastal Zone Land Use Ordinance and Coastal Zone Framework for Planning to reflect the final determination and interpretation.

DISCUSSION

Summary

When questions arise regarding the contents or application of the Land Use Ordinance (LUO), the ordinance has a provision to obtain a formal interpretation. The interpretation request is first heard by the Planning Commission and then their recommendation is forwarded to the Board of Supervisors for a final decision.

On January 26, 2012 the Planning Commission heard this item and made the following recommendation:

1. Use the Rural Recreation and Camping land use definition for Zip Lines, Bungee Jumping, Mountain Bike Courses, Cable Ski Lakes and other active rural recreation uses by amending the Land Use Ordinance – Article 8 to add these uses in the definition of Rural Recreation and Camping. Amend the Land Use Ordinance – Article 8 to add Bicycle Motocross (BMX) courses to Off Road Vehicle Courses. Amend the Land Use Ordinance – Article 8 to add Giant Swings to Outdoor Sports and Recreation. During the amendment process, any of the specific uses may be recommended to be added to other existing land use definitions.
2. Amend the Land Use Ordinance – Table 2-2 to add permit requirements for other rural recreation uses. Until such time as the amendments are adopted, evaluate on a case by case basis, subject to appeal, other rural recreational uses to determine if they are accessory to an existing primary use based on the size, scale and context of the proposed use, its operation and if it is consistent with the definition of *Use, Accessory* in Article 8. Other rural recreational uses that are not accessory to a primary use would not be permitted until after the Land Use Ordinance amendments have been completed.

3. Amend the Land Use Ordinance – Chapter 22.30 to add special standards for the establishment of other rural recreational uses, as appropriate. This would include establishing special findings for these uses in the Agriculture land use category.

Background

Over the past few months, it has come to the Department's attention that the range of ag-tourism, eco-tourism and outdoor rural recreation uses in the County is broadening beyond what is currently defined in our Land Use Ordinance. Included in this suite of new uses are activities such as zip lining, bungee jumping, giant swings, ropes courses, downhill and cross country mountain bike courses, cable ski lakes and bicycle motocross (BMX) facilities. Given that many of these uses were not common when the County last updated its "Outdoor Sports and Recreation Facilities" and "Rural Recreation and Camping" definitions, the County is now faced with categorizing these new uses and determining the appropriate permit process. The Department has begun to field initial inquiries on these new uses and in addition, was recently made aware of a zip line being operated by Margarita Adventures, LLC at the Santa Margarita Ranch.

The Department has chosen to use Section 22.06.030.C. of the Land Use Ordinance to request a formal interpretation from the Planning Commission and the Board of Supervisors about where to categorize these other active outdoor rural recreation types uses.

Interpretation

Zip line facilities and other similar rural recreational activities are not currently defined within an existing land use definition. Section 22.06.030.C. of the Land Use Ordinance states (in part):

A land use that is not listed in Table 2-2 or is not shown in a particular land use category is not allowed, except as follows:

- Where a proposed land use is not specifically listed in Table 2-2, the Director will review the proposed use and based upon the characteristics of the use, determine whether any of the listed uses is equivalent to that proposed.
- Upon a written determination by the Director that a proposed unlisted use is equivalent in its nature and intensity to a listed use, the proposed use will be treated in the same manner as the listed use in determining where it is allowed, what permits are required, and what standards affect its establishment.
- If a proposed use is found to not be equivalent to any listed use, the proposed use shall be deemed not allowed.

A determination of equivalency cannot be easily made for these outdoor rural recreational type uses. However, because there are existing outdoor recreation definitions (Rural Recreation and Camping and Outdoor Sports and Recreation) that were written and adopted to address outdoor and rural recreational uses of land, the Department is instead relying on Section 22.02.030 of the Land Use Ordinance to bring this matter to the Planning Commission and Board of Supervisors for an interpretation. Section 22.02.030 states:

Interpretation Procedure

If questions arise from persons or bodies charged with administering this Title about its content or application, the Commission shall ascertain all pertinent facts, and by resolution set forth its findings and interpretation. The resolution shall be forwarded to the Board, which shall consider the findings and interpretation of the Commission and render a final decision and interpretation on the matter. Thereafter the interpretation of the Board shall prevail.

There are two "outdoor recreation" land use definitions embodied in Section 22.80.030 of the Land Use Ordinance. Zip lines and the other rural recreation land uses do not appear to fit into either definition; however, clearly, these definitions were created to address outdoor recreational uses. The two definitions are as follows:

Outdoor Sports and Recreation Facilities (land use). Facilities for various outdoor sports and recreation, including: amusement, theme and kiddie parks; golf courses, (including country clubs and accessory on-site sales of golfing equipment as in a "pro shop," including golf carts), golf driving ranges and miniature golf courses; skateboard parks and water slides; go-cart and miniature auto race tracks; recreation equipment rental (e.g., ATCs and other non-highway motor vehicles, roller skates, surf and beach equipment); health and athletic clubs with predominately outdoor facilities; tennis courts, swim and tennis clubs; play lots, playgrounds and athletic fields (non-professional); recreation and community centers. (Amusement Park is further defined as establishments having amusement concessionaires and/or amusement devices, including theme entertainment parks, skating rinks, skateboard parks, permanent carnivals, vehicular amusement parks, and similar facilities.)

Rural Recreation and Camping (land use). Facilities for special group activities such as: outdoor archery, pistol, rifle, and skeet clubs and facilities (indoor shooting facilities are included under the definition of "Amusements and Recreational Services"); dude and guest ranches; health resorts including but not limited to outdoor hot spring or hot tub facilities; hunting and fishing clubs; recreational camps (including incidental RV camping, but not RV parks); group or organized camps; incidental seasonal camping areas without facilities. Equestrian facilities including riding academies and schools, boarding stables and exhibition facilities are included under the definition of "Animal Facilities." Camping facilities may include accessory boat storage and launching facilities where approved in compliance with Section 22.30.520 (Rural Recreation and Camping).

Information - Other Outdoor Rural Recreation Uses

The following provides information about the new category of rural recreation uses that staff is now faced with trying to understand, determining how they are operated, as well as categorizing them and determining the appropriate permit process.

A zip line is a cable suspended above an incline to which a pulley and harness are attached for a rider. It is designed to enable a user propelled by gravity to travel from the top to the bottom of the inclined cable, usually made of stainless steel, by holding on or attaching to the freely moving pulley. Zip-lines come in many forms. They may be short and low, intended for child's play and found on some playgrounds and in backyards. Longer and higher rides are often used as a means of accessing remote areas, such as a rainforest canopy.

Mountain biking is a sport which consists of riding bicycles off-road, often over rough terrain, using specially adapted mountain bikes. Typically mountain bikers ride on country dirt roads, fire roads or "single track" (narrow trails that wind through forests, mountains, deserts or fields). Noncompetitive mountain biking is done on established trails. Competitive mountain biking is typically done on either cross country or downhill courses. Downhill biking is a gravity-assisted time trial mountain biking event. Riders race against the clock on a course designed for this specialty that are steep, downhill terrain with jumps and other obstacles such as rocks and narrow bridges. Side by side racing courses can also be used. These typically are established in more open areas and don't contain as many obstacles. Cross country courses include a mix of rough forest paths and single track (also referred to as double track depending on width), smooth fire roads, and even paved paths connecting other trails.

Giant swings are a system suspended between two vertical poles where the rider is strapped into a harness, winched back and released to swing back and forth over the landscape.

Bungee jumping is an activity that involves jumping from a tall structure while connected to a large elastic cord. The tall structure is usually a fixed object, such as a building, bridge or crane; but it is also possible to jump from a movable object, such as a hot-air-balloon or helicopter, that has the ability to hover above the ground. When the person jumps, the cord stretches and the jumper flies upwards again as the cord recoils, and continues to oscillate up and down until all the energy is dissipated.

A ropes course is a challenging outdoor personal development and team building activity which usually consists of high and/or low elements. Low elements take place on the ground or only a few feet above the ground. High elements are usually constructed in trees or made of utility poles and require a belay for safety.

Cable lakes are either man made or natural waterbodies. Cable skiing is a way to water ski or wakeboard, where the skier's rope and handle are pulled by an electrically driven cable. Traditionally a waterskier or wakeboarder is pulled by a motorboat. The mechanism consists of two cables running parallel to one another with carriers between them every so often. The carriers are metal tubes that can hook up tow ropes with riders. Tow ropes are detached and attached at the same time without slowing the system down. This also allows a number of riders to waterski or wakeboard at the same time. The speed of the main cable can be fast (36 miles per hour) for waterskiers or slower (19 miles per hour) for wakeboarders. Wakeboard lakes typically have jumps, rails and other ramps that allow wakeboarders to do tricks that are normally done using a boat's wake or tricks similar to those done by skateboarders on land.

BMX racing is a type of off-road bicycle racing. The format of BMX was derived from motocross racing. BMX bicycle races are sprint races on purpose-built off-road single-lap race tracks. The track usually has a starting gate, a groomed, serpentine, dirt race course made of various jumps and banked corners and a finish line.

Options Evaluated by the Planning Commission

The following options were discussed and evaluated by the Planning Commission on January 26, 2012.

Option 1 – Interpret these active outdoor rural recreation uses (as described in this report) to be accessory uses (based on size and scale) where there is an existing primary use of a site.

The first option is to determine that an operation (based on size and scale) is accessory to the primary use of the site. In the case of the Santa Margarita Ranch, the primary use of the site is agriculture. As long as the use is secondary to the primary use of the site for agriculture, it could be allowed without a land use permit. We have had an inquiry about establishing a giant swing on the site of Camp Ocean Pines in Cambria. In this case, primary use of the site would be the organizational camp. As long as the use is secondary to the primary use of the site for the organizational camp and was used only by the campers, it could be allowed under the same permit as the primary use. This determination would be made on a case-by-case basis and would be very dependent on the scale of the operation proposed. Some of these uses are more intensive and require a significant amount of site disturbance (a BMX course and cable ski lake are two examples). For these more intensive uses or in any case where the operation is the primary use of the site, option 3 would be more appropriate and in some cases, perhaps Rural Recreation and Camping is not the appropriate land use definition (see option 3).

Option 2 – Interpret these active outdoor rural recreation uses fall under the definition of "Rural Recreation and Camping" and are equivalent to a use already identified in the definition.

If a determination was made that the land use definition that should be applied is "Rural Recreation and Camping" under Land Use Ordinance section 22.80.030.R., then these types of rural recreation uses would be allowable in all three rural land use categories (Agriculture, Rural Lands and Residential Rural). Although none of the uses described in this staff report are specifically mentioned in the definition of "Rural Recreation and Camping, with a few exceptions, they do seem to be best described as "rural" recreation uses. For example, the zip lines, as operated on the Santa Margarita Ranch, are "facilities for special group activities" (this language is included in the definition of Rural Recreation and Camping) and do seem to be consistent with the intensity of the uses specifically identified in this land use definition.

Consistent with Section 22.03.030.C., a determination could be made that these other rural recreation uses were equivalent in their nature and intensity to a listed use. The proposed use would then be treated in the same manner as the listed use in determining where it is allowed, what permits are required, and what standards affect its establishment.

For instance, if it were determined that zip lines were equivalent to an outdoor hot spring in terms of their nature and intensity, then the land use permit level would be a Conditional Use Permit. If zip lines were determined to be equivalent to incidental camping, then the land use permit level would be a Site Plan. There could be a determination that each of these uses was equivalent to a different use in the Rural Recreation and Camping definition. For example, a giant swing could be found equivalent to hunting and fishing clubs with a land use permit of Site Plan. However, a bungee jumping facility could be found to be equivalent to sport shooting facilities, which is a Conditional Use Permit.

Option 3 – Interpret these active outdoor rural recreation uses need to be added to the definition of “Rural Recreation and Camping” and determine the appropriate permit level and standards.

The third approach could be to recommend that the Board of Supervisors direct that an amendment be prepared that would add these rural recreation type uses specifically into the definition of Rural Recreation and Camping and determine the appropriate permit level. There could also be special standards written into the ordinance to address setbacks, parking, hours of operation, etc. For a majority of these uses, the permit level could be either Site Plan or Minor Use Permit (based on size and scale), however for the more intensive uses such as BMX courses or cable ski lakes, a Conditional Use Permit may be more appropriate.

In the case of BMX courses, it may be more appropriate to add these to “Off Road Vehicle Courses”. This definition was created for motorized off road vehicle courses, however, BMX Courses are similar to Motorcycle courses (albeit smaller). The Off Road Vehicle Course definition reads as follows:

Off-Road Vehicle Courses (land use). Rural areas set aside for the use of off-road vehicle enthusiasts including dirt bike, enduro, hill climbing or other off-road motorcycle courses; also, rural areas for competitive events utilizing four-wheel drive vehicles. Does not include sports assembly facilities, or simple access roads which are usable by only four-wheel drive vehicles.

If BMX Courses were added to this definition they would only be allowable in the Rural Lands and Recreation land use categories, which would severely limit where they could be established in the county.

The Planning Commission found that Giant Swings would be more appropriate to be added to the Outdoor Sports and Recreation land use definition as they felt this use was more closely related to an amusement park ride than the other uses and is typically found in an amusement park.

Option 4 – Interpret these active outdoor rural recreation uses fall under the definition of “Rural Recreation and Camping” and are equivalent to a use already identified in the definition until such time as a clean up amendment is prepared.

This option is a hybrid of the two previous choices. A policy interpretation could be made that the subject uses are equivalent to one of the Rural Recreation and Camping uses and direct staff to follow this direction until a clean-up amendment could be prepared and processed.

Option 5 – Interpret these active outdoor rural recreation uses fall under the definition of “Outdoor Sports and Recreation”

The Outdoor Sports and Recreation definition in Land Use Ordinance section 22.80.030.O. does include amusement parks and in the California Labor Code there is a definition of “amusement ride” that reads as follows:

§ 7901. Definitions - As used in this part:

- (a) "Amusement ride" means a mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. "Amusement ride" includes the business of operating bungee jumping services or providing services to facilitate bungee jumping, but does not include slides, playground equipment, coin-operated devices or conveyances which operate

directly on the ground or on the surface or pavement directly on the ground or the operation of amusement devices of a permanent nature. The division shall determine the specific devices which are amusement rides for the purposes of this part. This determination shall be made to apply equally to all operators of similar or identical rides and shall be made pursuant to a procedure promulgated by the standards board. (same definition at 8 CCR 3901).

(The Department of Planning and Building contacted the State Department of Occupational Safety and Health and they confirmed that the State only regulates zip lines that are a mechanical device. A gravity zip line is not considered by the State to be a mechanical device.)

Although the definition of “Outdoor Sports and Recreation” contains “amusement park” which contains “amusement devices”, this definition was written to cover the more intensive outdoor uses that are not typically found in rural areas, but are more often found in communities. In addition to amusement parks, the definition also includes go-cart tracks, miniature golf courses and swim and tennis clubs. A majority of these rural recreational uses are less intensive than the uses defined in the Outdoor Sports and Recreation land use definition. As an example, a zip line does not have a large footprint and is a generally quiet use as compared to a go-cart track. They also have been used to learn about the environment, wildlife and history of the area that the user is touring through (the zip lines in the rain forest or redwood forests are examples). Because there is a difference in the intensity of zip lines and the other similar rural recreation as compared to the uses listed in Outdoor Sports and Recreation, this land use definition does not appear to be a good fit. The Planning Commission did find that Giant Swings should be included in the Outdoor Sports and Recreation land use definition as they felt that this use was more identified with an amusement park than the other uses.

If a determination was made that the land use definition that should be applied is Outdoor Sports and Recreation, then all of these uses would not be allowable in the Agriculture and Rural Lands land use categories, as well as a number of “urban” land use categories such as Commercial Retail. This would limit the rural location of these facilities to the Residential Rural land use category. Limiting these uses to only Residential Rural areas (which have lots that typically range in size from 5 to 20 acres) does not seem to be practical in most instances. Furthermore, there has been extensive discussion about allowing complimentary ag-tourism uses to occur in a manner that is supportive of the County’s agriculture and tourism sectors and prohibiting these types of uses so extensively would likely be counter-productive to this goal.

Summary

The Planning Commission found that no existing land use definition works well for these types of rural recreation uses. With the exception of Giant Swings, which the Planning Commission determined are typically rides in an amusement park, they agreed with staff’s determination that Outdoor Sports and Recreation uses are more intensive and require a relatively large footprint and therefore wouldn’t be an appropriate definition. Outdoor Sport and Recreation uses also are typically open every day, individuals can use the facilities without assistance upon payment of a fee and have associated concessionaire or pro shop services. The Planning Commission also determined that there does not appear to be an obvious equivalent use or uses in the Rural Recreation and Camping land use definition. The Planning Commission therefore found that they could not determine one or more of the existing uses in the Rural Recreation and Camping definition to be an “equivalent” use.

Based on the conclusions set forth above, the Planning Commission recommended the following.

- Amendments should be processed to:
 - Add Zip Lines, Bungee Jumping, Mountain Bike Courses, Cable Ski Lakes and other active rural recreation uses to the definition of Rural Recreation and Camping.
 - Add BMX courses to the definition of Off Road Vehicle Courses.
 - Add Giant Swings to the definition of Outdoor Sports and Recreation.
- Permit requirements should be added for the other rural recreation uses

- Add special standards for the establishment of other rural recreation uses should as appropriate.
- Establish special findings for other rural recreation uses in the Agriculture land use category which could include, but not be limited to, a finding that the proposed use would not have an adverse impact on off-site or on-site agriculture.
- Until such time as amendments are adopted, staff can evaluate on a case by case basis, subject to appeal, other rural recreation uses to determine if they are accessory to an existing primary use based on
 - The size, scale and context of the proposed use.
 - How the use is operated.
 - If the use is consistent with the definition of “Use, Accessory” in Article 8 of the Land Use Ordinance.
- Other rural recreation uses that are not accessory to a primary use would not be permitted until after the Land Use Ordinance amendments have been completed.

If the Board finds that any amendments to the Land Use Ordinance are necessary, staff would request that an authorization to process these amendments also be included in the action taken. The Department will return as part of a future Strategic Planning session on Department priorities to determine the appropriate priority for the processing of these amendments.

OTHER AGENCY INVOLVEMENT/IMPACT

If the Board authorizes amendments to the general plan and ordinances based on this interpretation request, they will be referred to all applicable agencies and organizations during processing.

FINANCIAL CONSIDERATIONS

This interpretation was covered by the existing Department budget. County initiated amendments costs are also covered by the Department budget.

RESULTS

If the Board makes this interpretation the Department will evaluate on a case by case basis, subject to appeal, other rural recreation uses to determine if they are accessory to an existing primary use and will return as part of a future Strategic Planning session on Department priorities to determine the appropriate priority for the processing of needed amendments.

ATTACHMENTS

- Attachment 1 - Resolution for adoption by the Board of Supervisors
- Attachment 2 - Resolution from the Planning Commission
- Attachment 3 – Planning Commission Minutes
- Attachment 4 – Correspondence received at Planning Commission meeting of January 26, 2012
- Attachment 5 – Information provided by Margarita Adventures
- Attachment 6 – Information regarding the issuance of the Business License and from the Margarita Adventures Website regarding the zip line tours
- Attachment 7 – Zoning Clearance / Business License issued for Margarita Adventures
- Attachment 8 - Preliminary Survey of How Other Counties Address Zip Lines